

Senate Bill S52A

SIGNED BY GOVERNOR

2019-2020 Legislative Session

Requires awarding of costs and attorney fees in frivolous action involving public petition and participation

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(D, WF) 27TH SENATE DISTRICT

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Cited in *Paid v NY Times Co*
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BILL AMENDMENTS

[A \(ACTIVE\)](#)

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S52A (ACTIVE) - DETAILS

See Assembly Version of this Bill:

[A5991 \(/Legislation/Bills/2019/A5991/Amendment/A\)](#)

Law Section:

Civil Rights Law

Laws Affected:

Amd §§70-a & 76-a, Civ Rts L; amd R3211, CPLR

Versions Introduced in Other Legislative Sessions:


2011-2012: [A10594 \(/Legislation/Bills/2011/A10594\)](#),
2013-2014: [S7280 \(/Legislation/Bills/2013/S7280\)](#), [A856 \(/Legislation/Bills/2013/A856\)](#),
2015-2016: [S1638 \(/Legislation/Bills/2015/S1638\)](#), [A258 \(/Legislation/Bills/2015/A258\)](#),
2017-2018: [S68 \(/Legislation/Bills/2017/S68\)](#), [S2183 \(/Legislation/Bills/2017/S2183\)](#), [A1413 \(/Legislation/Bills/2017/A1413\)](#), [A5292 \(/Legislation/Bills/2017/A5292\)](#).

S52A (ACTIVE) - SUMMARY

Requires awarding of costs and attorney fees in frivolous actions involving public petition and participation; expands application of actions involving public petition and participation.

S52A (ACTIVE) - SPONSOR MEMO

BILL NUMBER: S52a	REVISED 07/22/2020
SPONSOR: HOYLMAN	
TITLE OF BILL:	
An act to amend the civil rights law, in relation to actions involving public petition and participation; and to amend the civil practice law and rules, in relation to stay of proceedings	
PURPOSE OF BILL:	
The purpose of this bill is to extend the protection of New York's current law regarding Strategic Lawsuits Against Public Participation ("SLAPP suits"). The amendment will protect citizens' exercise of the rights of free speech and petition about matters of public interest.	
SUMMARY OF PROVISIONS OF BILL:	
Section 1 of the bill would amend section 70-a of the Civil Rights Laws to provide that costs and attorney's fees "shall be recovered upon a demonstration that a SLAPP suit was commenced or continued without a	

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S52A (ACTIVE) - BILL TEXT

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52--A

2019-2020 Regular Sessions

I N S E N A T E

(PREFILED)

January 9, 2019

Introduced by Sen. HOYLMAN -- read twice and ordered printed, and when printed to be committed to the Committee on Codes -- recommitted to the Committee on Codes in accordance with Senate Rule 6, sec. 8 -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

AN ACT to amend the civil rights law, in relation to actions involving public petition and participation; and to amend the civil practice law and rules, in relation to stay of proceedings

THE PEOPLE OF THE STATE OF NEW YORK, REPRESENTED IN SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

Section 1. Paragraph (a) of subdivision 1 of section 70-a of the civil rights law, as added by chapter 767 of the laws of 1992, is amended to read as follows:

(a) costs and attorney's fees [may] SHALL be recovered upon a demonstration, INCLUDING AN ADJUDICATION PURSUANT TO SUBDIVISION (G) OF RULE THIRTY-TWO HUNDRED ELEVEN OR SUBDIVISION (H) OF RULE THIRTY-TWO HUNDRED TWELVE OF THE CIVIL PRACTICE LAW AND RULES, that the action involving public petition and participation was commenced or continued without a substantial basis in fact and law and could not be supported by a substantial argument for the extension, modification or reversal of existing law;

§ 2. Subdivision 1 of section 76-a of the civil rights law, as added by chapter 767 of the laws of 1992, is amended to read as follows:

1. For purposes of this section:

(a) An "action involving public petition and participation" is [an action,] A claim[, cross claim or counterclaim for damages that is brought by a public applicant or permittee, and is materially related to any efforts of the defendant to report on, comment on, rule on, challenge or oppose such application or permission] BASED UPON:

(1) ANY COMMUNICATION IN A PLACE OPEN TO THE PUBLIC OR A PUBLIC FORUM IN CONNECTION WITH AN ISSUE OF PUBLIC INTEREST; OR

(2) ANY OTHER LAWFUL CONDUCT IN FURTHERANCE OF THE EXERCISE OF THE

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Joseph_Sanderson_1 • 9 months ago

This is an essential bill. I also urge the legislature to make clear that (a) the right to attorneys' fees conferred by this provision is a substantive provision of New York law that applies in federal court as well, and not merely a procedural aspect that applies only in state court; (b) the costs and fees may be awarded in a separate action (for example, if a plaintiff voluntarily dismisses after forcing the defendant to incur expenses defending themselves); and (c) the legislature strongly encourages judges to exercise their discretion to stay discovery pending a motion to dismiss in actions involving public participation (since downstate judges routinely override the preference under the CPLR for stays of disclosure pending a motion to dismiss).

Additionally, it should be made clear in the statute that counterclaims and cross-claims are covered too. Retaliatory counterclaims - for example, suing a plaintiff for libel for a statement to the press about a lawsuit they filed to address issues such as discrimination - are all too common and deter people from speaking up.

**Remy_Green** • a year ago

This bill is an absolutely vital and necessary measure to protect ordinary citizens from well-heeled attempts to cow criticism. For decades, judges within the system have lamented the limits of existing mechanisms to make defendants who face frivolous SLAPPs whole on the most basic level. See *Gordon v Marrone*, 155 Misc 2d 726, 736 (Sup Ct, Westchester County 1992), *aff'd Gordon v Marrone*, 202 AD2d 104, 111 (2d Dept 1994), *lv. denied Gordon v Marrone*, 84 NY2d 813 (1995) ("Persons who have been outspoken on issues of public importance targeted in such suits or who have witnessed such suits will often choose in the future to stay silent. Short of a gun to the head, a greater threat to First Amendment expression can scarcely be imagined.").

Similarly, while commentators have advocated various workarounds, those solutions necessarily fall short. See e.g., Marnie Stetson, *Reforming Slapp Reform: New York's Anti-Slapp Statute*, 70 N.Y.U. L. Rev. 1324 at 1345 (1995) (suggesting use of Section 130 "sanctions," but noting limitations on that mechanism); *Gordon*, 155 Misc. 2d at 737 "The court's lament is its inability to award the Conservancy the full reasonable value of the services of its attorneys and its expenses.").

As to § 3 of the proposed bill, I ask that the following amendment be considered (second sentence is the requested addition) (the language is borrowed heavily from the "safe harbor" provision of NJ R. 1-4.2(b)).

Cited in *Palin v NY Times Co*
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